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10/569,313

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Roger Braun

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SUITE 1201

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EXAMINER

AMAKWE, TAMRA L

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                     |  |
|------------------------------|--------------------------------------|-------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/569,313 | <b>Applicant(s)</b><br>BRAUN, ROGER |  |
|                              | <b>Examiner</b><br>TAMRA L. AMAKWE   | <b>Art Unit</b><br>1785             |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20-31, 33-37 and 39-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-31, 33-37 and 39-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 20-30, 35-37, and 39-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,190,131 to Robinson.**

Re claim: 20: Robinson teaches a wooden material panel (this wooden material panel is not taught by Robinson, but is in the preamble and not given weight because the structure is present) including a surface coating applied at least on a front side. See surface coating 8, 6, and 2, FIG. 1. Robinson teaches the surface coating being a multiple layer surface coating (see 8, 6, 2) comprising at least one layer of inherently transparent plastic having a Shore hardness A up to 90 (see Table 1, Example 1 and 3, layers 2 and 8). The layer of transparent plastic is transparent while not explicit in Robinson, because the same materials are used and same Shore hardness, thus transparency is a property that is inherently expected also. Robinson teaches wherein the at least one layer of transparent plastic has a thickness between 20 micrometers and 300

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micrometers (0.02-0.3 mm) See Table 1, layer 8, Example 9, which falls within Applicant's range.

Robinson doesn't teach wherein the at least one layer of transparent plastic borders on a layer of varnish or paint.

Robinson teaches the last layer of plastic 2 borders a machine. See 4, FIG. 1. It is well known that machines are decorated with a variety of paints and varnishes in order to shine or advertise or to be seen, such as the yellow color that are on the construction bulldozer machines.

Thus, it would have been obvious to one having ordinary skill in the art to have modified the machine layer 4 to include a paint or varnish in order to be decorative and noticed. Adding the laminate of Robinson would reduce the noise from the machine as taught by Robinson in 3:1:225.

Re claim 21: Robinson teaches the Shore hardness A is up to 80. See Table 1, Example 1 and 3, layers 2 and 8.

Re claim 22: Robinson teaches the Shore hardness A is up to 65. See Table 1, Example 1 and 3, layers 2 and 8.

Re claim 23: Robinson teaches the Shore hardness A is up to 50. See Table 1, Example 1 and 3, layers 2 and 8.

Re claim 24: Robinson teaches the Shore hardness A is from 20 to 60. See Table 1, Example 1 and 3, layers 2 and 8.

Re claim 25: Robinson teaches the Shore hardness A is from 30 to 40. See Table 1, Example 1 and 3, layers 2 and 8.

Re claim 26: Robinson doesn't teach the panel is a ceiling panel. However, there are no limitations in the body of the claim to structurally define said panel and thus the teachings of the prior art could function as a ceiling panel.

Further, it would have been obvious to one having ordinary skill in the art to have modified the wooden panel as a ceiling panel to use the panel to provide noise barriers in housing where ceilings are found with success seeing as machine generated noise is louder than the common room-to-room noises in houses. Robinson doesn't limit the panel to just machines see 1:5-10 "other noise-generating sources".

Re claim 27: Robinson doesn't teach the panel is a floor panel.

However, there are no limitations in the body of the claim to structurally define said panel and thus the teachings of the prior art could function as a floor panel.

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It would have been obvious to one having ordinary skill in the art to have modified the wooden panel as a floor panel to use the panel to provide noise barriers in housing where floors are found with success seeing as machine generated noise is louder than the common room-to-room noises in houses. Further Robinson doesn't limit the panel to just machines see 1:5-10 "other noise-generating sources".

Re claim 28: Robinson teaches said at least one layer of plastic comprises at least one layer containing at least one thermoplastic material. See Table 1, Example 1 and 3, layers 2 and 8.

Re claim 29: Robinson doesn't teach said at least one layer of plastic comprises at least one layer containing a mixture of plastics including at least one thermoplastic material.

However, Robinson does teach the option of at least two different polymers per each layer in Table 1. Robinson teaches the polymers yield various Shore hardness values that affect noise reduction, and wear and impact resistance. See 2:39-68.

It would have been obvious to one having ordinary skill in the art to mix the two to have a combination of properties in one layer, such as a desired noise transmission and wearing well.

Re claim 30: Robinson teaches one layer of polyolefin polyethylene and polyurethane. See Table 1, Example 1 and 3, layers 2 and 8.

Re claim 33: Robinson doesn't teach the at least one layer of plastic has a thickness from 20 micrometers to 40 micrometers.

However, Robinson does teach thicknesses in this range for the middle layer 6, and to use the particular plastic layers 2 or 8 to have the middle layer thickness would be obvious to interchange seeing as the middle layer is also a polymer. See 2:60-68 and Table 1.

It would have been obvious to one of ordinary skill in the art to produce a thickness as claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. See MPEP § 2144.05 II (B). The thickness affects the degree of noise reduction. One skilled in the art would recognize that a greater thickness would produce and increase in the noise reduction.

Re claim 34: Robinson doesn't teach the at least one layer of plastic has a thickness from 20 micrometers to 70 micrometers.

However, Robinson does teach thicknesses in this range for the middle layer 6, and to use the particular plastic layers 2 or 8 to have the middle layer thickness would be obvious to interchange seeing as the middle layer is also a polymer. See 2:60-68 and Table 1.

It would have been obvious to one of ordinary skill in the art to produce a thickness as claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. See MPEP § 2144.05 II (B). The thickness affects the degree of noise reduction. One skilled in the art would recognize that a greater thickness would produce and increase in the noise reduction.

Re claim 35: Robinson teaches the at least one layer of plastic has a thickness from 20 micrometers to 100 micrometers. See Table 1, Example 1 -9, layer 8.

Re claim 36: Robinson teaches the at least one layer of plastic has a thickness from 20 micrometers to 150 micrometers. See Table 1, Example 1 -9, layer 8.

Re claim 37: Robinson teaches the at least one layer of plastic has a thickness from 20 micrometers to 250 micrometers. See Table 1, Example 1 -9, layer 8.

Re claim 39: Robinson teaches the at least one layer of plastic is an externally exposed layer or a non-externally exposed layer. See layers 8 and 2, respectively, Fig. 1.

Re claim 40: Robinson teaches at least two layers of plastic have been applied onto the wooden material panel. See above. However, the claim is not in the present tense – e.g. “have been applied”.



Re claim 41: Robinson teaches at least one layer of plastic is applied onto a main surface of at least said front side of the wooden material panel. See above.

Re claim 42: Robinson teaches at least two layers of plastic have been applied onto at least one main surface of the wooden material panel. See above. However, the claim is not in the present tense – e.g. “have been applied”.

Re claim 43: Robinson teaches wherein between the at least two layers of plastic at least one layer of another material having a different Shore hardness A is provided. See Example 3.

Re claim 44: Robinson teaches the at least one layer of plastic borders onto a layer of synthetic resin. See 2:60-65, plastic barrier.

Re claim 45 Robinson teaches the layer of synthetic resin is a varnish layer. See 2:60-65, plastic barrier.

Re claim 46: Robinson doesn't teach the at least one layer of plastic borders onto a layer of paint. However, see obvious rationale above to this similar limitation, similar rationale applies.

Re claim 47: Robinson teaches the at least one layer of plastic has been coated onto a layer of bonding agent. See middle layer 6. However, what has happened is past tense.

Re claim 48: Robinson teaches further comprising a layer of bonding agent applied onto the at least one layer of plastic. See middle layer 6.

Re claim 49: Robinson teaches the at least one layer of plastic is elastic (see Rubber, Table 1, layers 8 and 2) and naturally resumes its original shape after a mechanical load is removed which had resulted in a deformation. However, what has happened is past tense.

**Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,190,131 to Robinson in view of US 6077613 to Gaffigan.**

Re claim 31: Robinson doesn't teach at least one layer of a transparent plastic is at least one of filled with a mineral or an organic filler.

Gaffigan teaches at least one layer of a plastic is at least one filled with a mineral or an organic filler. See polyethylene, carbon black, and magnesium silicate in 4:10-50, 4:50-55.

It would have been obvious to one having ordinary skill in the art to have modified any of the polymer layers of Robinson to add the claimed ingredients because Gaffigan teaches to lubricate, or to impart particular properties to the layer.

### *Response to Arguments*

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Robinson is still used to teach the claimed invention. Applicant argues that the preamble is not taught by Robinson, however, as set forth prior, the same structure is taught in the body of the claim and thus functions as the preamble. See MPEP 2111.02. Without such reliance, however, a preamble is generally not limiting when the claim body describes a structurally complete invention such that deletion of the preamble phrase does not affect the structure or steps of the claimed invention. Consequently, "preamble language merely extolling benefits or features of the claimed invention does not limit the claim scope without clear reliance on those benefits or features as patentably significant." See MPEP 2111.02.

Applicant argues the barrier material can't be the low Shore hardness. Applicant argues that the low Shore hardness material is the interior layer and argues an outer layer of polyurethane is not the one layer of plastic layers. However, the transparent

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plastic having a Shore hardness A of up to 90 is Robinson's plastic layer 2 that borders a machine 4, FIG. 1. See Table 1.

Applicant argues that Robinson doesn't teach his machine is painted/decorated. However, decoration applied to anything, including machinery, is a well known and established process for the purpose of providing aesthetics.

Applicant argues that since one layer of plastic is transparent that it can't border a paint/varnish/pigment layer because they should be transparent in order to not affect decorative effects of these layers. Applicant hasn't proven that a transparent layer would affect an adjacent decorative effect layer.

Regarding Robinson not teaching a transparent layer, this is addressed above. Applicant argues that the Examiner didn't provide a reason that a machine is painted; however acknowledges that the Examiner stated a reason - "in order to shine or advertise or to be seen". This is a valid reason. See reasoning above to decorative affects for aesthetic purposes.

Applicant argues that when the surface of the machine abuts, the surface is concealed from view. However, Applicant hasn't amended the claims to what is argued. The claims are open and the concealment is not claimed and thus is not of issue presently.

*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAMRA L. AMAKWE whose telephone number is (571)272-1519. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m., alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Ruthkosky can be reached on 571-272-1291. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner  
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